

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSEMEMORANDUM Enforcement & Compliance Docket
& Information CenterSUBJECT: Timely Initiation of Responsible Party Searches,
Issuance of Notice Letters, and Release of InformationFROM: Gene A. Lucero, Director *Gene A. Lucero*
Office of Waste Programs Enforcement

TO: Addressees

PURPOSE

This memorandum re-emphasizes the importance of early identification of potentially responsible parties (PRPs) and timely issuance of notice letters for the RI/FS. These actions support the Agency's policy to secure cleanup by responsible parties in lieu of Superfund use, where such cleanup can be accomplished in a timely and effective manner. The sooner PRPs are identified and notified about their potential responsibility, the more time they have to organize themselves to assure responsibility for the RI/FS and cleanup (See "Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasibility Studies Under CERCLA," Lee M. Thomas and Courtney M. Price, March 20, 1984).

This memo also clarifies Agency policy on release of site-specific information to PRPs and others. It supplements the information release section of the Interim CERCLA Settlement Policy (December 5, 1984). The clarification is designed to facilitate information exchange in order to encourage effective negotiation and coalescing by PRPs among themselves. Effective PRP negotiations and coalescing are likely to engender effective settlement discussions with the government.

INITIATION OF PRP SEARCHES

In an effort to expedite and streamline the RI/FS process, you should focus attention on early identification of PRPs and timely issuance of notice letters. As you are aware, in FY 86 you will be required to conduct PRP searches for NPL Updates 3, 4, 5, and 6. This will be reflected in your SCAP targets.

In order to accomplish this, it will be necessary to start PRP searches concurrently with developing sites for listing. At the latest, PRP searches should be initiated when candidate sites are sent to HQ for NPL quality control review. You will need to plan accordingly for this activity, particularly in your case budgets.

Technical assistance resources for PRP searches are available through the Technical Enforcement Support Contracts, TES I and TES II, and are coordinated through the case budgeting process. Each Region will be given a line of credit to support the costs of responsible party searches, title searches, and financial assessments. This credit will be allocated by a straight-forward calculation of average past costs of such activities multiplied by the number to be done in each Region.

Because of the heavy work undertaken by TechLaw in both the TES I and TES II contracts, the prime contractors have been distributing new work assignments for PRP searches to other subcontractors. This should result in more timely reports.

NOTICE LETTER ISSUANCE

Timely issuance of notice letters for the RI/FS normally means that notice letters are issued as soon as possible after completion of the PRP search and prior to any Federally-financed response action. Timing of the notice letter should take into account the number of PRPs and the complexity of the data associating PRPs with the site. In general, notice letters should be issued 60 days before obligation of RI/FS funds. (See "Procedures for Issuing Notice Letters," Gene A. Lucero, October 12, 1984). PRPs should therefore have sufficient time to organize themselves and initiate preliminary contacts and discussions with Agency personnel. This will also avoid delay in beginning a Fund financed RI/FS should it become necessary.

Notice letters are generally combined with information requests under RCRA §3007 and CERCLA §104(e) (See "Policy on Enforcing Information Requests in Hazardous Waste Cases", Courtney M. Price, September 10, 1984). Notice letters are an important step in determining whether a PRP is willing and financially capable of undertaking a proper response. The NEIC Technical Information Center is a useful source for assessing the financial viability of PRPs that offer stock to the public. For privately held companies, the TES contract can be used to estimate the financial capability.

Notice letters should be issued only to parties where sufficient evidence is available to make a preliminary determination of liability under CERCLA §107. Where doubt exists as to whether available information supports notice letter issuance, information requests should be sent prior to notice letters.

In the past, notice letters were sent to PRPs who may or may not have been liable under CERCLA. This may be avoided by issuing notice letters to parties where sufficient evidence is available to make a preliminary determination of liability under CERCLA §107. For example, parties known to have arranged for disposal of material which is not known to contain a hazardous substance should not receive a notice letter. The Regions should be particularly aware of the adequacy and completeness of the PRP searches. This will mean expending resources on the quality review of contractors' work. I'm sure this will save critical resources at a later time in the enforcement process.

In addition, it is imperative that copies of notice letters be sent to Headquarters for purposes of tracking and responding to information requests. Along with other reporting requirements, each Region will be responsible for sending copies of notice letters quarterly.

RELEASE OF SITE-SPECIFIC INFORMATION

It is important to conduct PRP searches, issue notice letters and collect information as soon as possible, not only to expedite the RI/FS process, but to ensure that certain site-specific information is available for use by PRPs. Availability of this information to PRPs will help PRPs organize and negotiate among themselves.

As stated in the Interim CERCLA Settlement Policy, EPA will release certain site-specific information to PRPs in order to facilitate settlement discussions. This information includes:

- Identity of notice letter recipients;
- Volume and nature of wastes to the extent identified as sent to the site ("waste-in" list); and
- Ranking by volume of material sent to the site, if available

There are, however, certain limitations with regard to the information outlined above. For example, summary conclusions about the volume and nature of waste sent to a site, including a volumetric ranking should be provided to the extent that such information exists. Volumetric rankings should be developed when the Region determines that the rankings will be of significant benefit to the Agency and responsible parties in facilitating settlement or cleanup. Moreover, due to their preliminary and summary nature, EPA will not expend resources to explain or defend any list or ranking. Lists or rankings released to PRPs and others should always contain appropriate disclaimers.

The settlement policy states that release of information to PRPs should generally be conditioned on a reciprocal release of information by PRPs. The reciprocal release policy does not apply to the release to PRPs of the names of other notice letter recipients on a site, or to waste-in lists and volumetric rankings. Release of any additional information, however, should be conditioned on a reciprocal release of information by PRPs. In determining the type of additional information to be released, Regions should consider the possible impact on any potential litigation.

Again, it is important to conduct PRP searches, issue notice letters, and collect information as soon as possible so that the information discussed here is available for use. Waste-in lists and volumetric rankings should be developed as soon as possible after completion of PRP searches. This information should be provided with notice letters, if available. Such information may also be released in advance of notice letters upon request when the Region determines it will facilitate settlement.

The names of notice letter recipients are available to the public in response to requests under the Freedom of Information Act (FOIA) (See "Releasing Identities of Potentially Responsible Parties in Response to FOIA Requests," January 26, 1984). The names may also be released at the Agency's initiative without a FOIA request. Now, to the extent the information exists, waste-in lists and volumetric rankings will also be available to the public under FOIA and at the Agency's discretion. Thus, requests for information on notice letter recipients and for waste-in lists or volumetric rankings should be handled consistently whether the requests are made by PRPs or the general public.

For further information on topics discussed in this memo, please contact Linda Southerland at FTS 382-2035.

Addressees:

Director, Office of Emergency and Remedial Response
Region II

Director, Air and Waste Management Division
Regions III, IV, VI, VII, VIII

Director, Waste Management Division
Regions I, V

Director, Toxics and Waste Division
Region IX

Director, Air and Waste Division
Region X

Regional Counsels, Regions I-X